

1 KENNER LAW FIRM, P.C.  
2 David E. Kenner, SBN 41425  
3 Brett A. Greenfield, SBN 217343  
4 16000 Ventura Boulevard, PH 1208  
5 Encino, CA 91364  
6 818 995 1195  
7 818 475 5369 - fax

5 WADE, KELLY & SULLIVAN  
6 733 W. 4<sup>th</sup> Avenue, Suite 200  
7 Anchorage, Alaska 99501  
8 (907) 561-7743  
9 (907) 562-8977 - fax

8 Attorney for Defendant Josef F. Boehm

9  
10 IN THE UNITED STATES DISTRICT COURT  
11  
12 DISTRICT OF ALASKA

12 Sally C. Purser, )  
13 Plaintiff, ) DEFENDANT JOSEF BOEHM'S  
14 v. ) OPPOSITION TO PLAINTIFF'S MOTION  
15 Josef F. Boehm, Allen K. ) FOR SANCTIONS  
16 Bolling, and Bambi Tyree, )  
17 Defendants. )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

CASE NO.: A05-0085 (JKS)

20 I. BOEHM HAS COMPLIED WITH DISCOVERY DISCLOSURES TO DATE  
21

22 Boehm's opposition to Summary Judgment was supported by  
23 impeachment evidence as follows:

24 1. Purser Grand Jury Testimony;  
25 2. Boehm Sentencing Hearing Testimony;  
26 3. Purser's Expert Dr. Rose's Written Report;  
27 4. Deposition Testimony;  
28 5. Sworn Declarations of known witnesses Tina Arndt and Vince  
Blomfield;  
6. Recorded Interview of known witness Miranda Ditullio;  
7. Recorded Interview of Sally Purser

1           8. Report and sworn testimony of Dr. Jacobsen.

2           Purser argues that Boehm has failed to comply with *Federal Rule*  
 3 26(a)(1) disclosure requirements. Boehm respectfully disagrees.

4           *Federal Rule of Civil Procedure 26(a)(1)(B) carves out an*  
 5 *exception to the disclosure requirements for the use of impeachment*  
 6 *evidence:*

7           **(B) a copy of, or a description by category and**  
 8 **location of, all documents, electronically stored**  
 9 **information, and tangible things that are in the**  
 10 **possession, custody, or control of the party and**  
 11 **that the disclosing party may use to support its**  
 12 **claims or defenses, unless solely for**  
 13 **impeachment;**

14           *Federal Rule of Civil Procedure 26(a)(5) sets forth additional and*  
 15 *needed methods of discovery:*

16           **(5) Methods to Discover Additional Matter.** **Parties**  
 17 **may obtain discovery by one or more of the**  
 18 **following methods: depositions upon oral**  
 19 **examination or written questions; written**  
 20 **interrogatories; production of documents or**  
 21 **things or permission to enter upon land or other**  
 22 **property under Rule 34 or 45(a)(1)®, for**  
 23 **inspection and other purposes; physical and**  
 24 **mental examinations; and requests for admission.**

25           Boehm's disclosures have been timely and in line with statutory  
 26 language. Purser is not prejudiced by the need and disclosure of  
 27 additional discovery as a trial date has not been set. Furthermore and  
 28 most importantly, the existing and recently discovered evidence being  
 disclosed is relevant to the defense of Boehm and directly relates to  
 Purser's allegations.

29           The existence of additional lawsuits will undoubtedly reveal  
 30 additional relevant discovery to the instant action.<sup>1</sup>

---

27           <sup>1</sup>As this court is aware, Boehm is a named defendant in additional lawsuits resulting from the underlying  
 28 criminal matter. Depositions and trial dates are currently being discussed and set. Boehm's counsel will seek relevant  
 discovery to be used in the instant matter. There is a continued need and good cause showing for additional discovery in

1       This is a very complex case that was left largely undiscovered  
 2 for a four year period. Witnesses are difficult to locate. Virtually  
 3 all of the witnesses for both plaintiff and defendant were at one time  
 4 addicted to "crack" cocaine resulting in flawed memory, perception and  
 5 credibility.

6       Former counsel's strategy did not include aggressive discovery,  
 7 contrary to the present needs of this litigation.<sup>2</sup>

8       **II. PURSER HAS ALWAYS KNOWN THE EXISTENCE OF BOEHM'S IMPEACHMENT**  
 9       **WITNESSES AND IN MANY INSTANCES FAILED TO DISCLOSE THEIR**  
 10      **IDENTITY IN DISCOVERY**

11      Purser argues that Boehm has attempted to "sand bag" by using  
 12 affidavits from undisclosed witnesses in his opposition to summary  
 13 judgment. Counsel's argument is misleading at best.

14      All of the witnesses, affidavits and identities used in Boehm's  
 15 opposition to summary judgment were known of by Purser prior to her  
 16 filing this lawsuit. Worse yet, Purser failed to identify them in  
 17 answers to discovery and include some of them on her Final Witness  
 18 List.

19      In some cases Purser's Final Witness List comprises the very  
 20 individuals for which she claims are "undisclosed" by Boehm. The  
 21 following is fact:

22      **I. Tina Arndt**

23      In her December 12, 2006 deposition, Purser testified that Tina  
 24 Arndt was a witness to support the allegations set forth in her

25      \_\_\_\_\_  
 26 light of the new facts brought to light.

27      <sup>2</sup>Boehm's discovery efforts within the past three months have included multiple trips to Alaska, intensive  
 28 investigation, depositions, multiple sets of written discovery, location and identification of new witnesses, brought forth  
 multiple impeachment issues and material facts in dispute. Boehm has aggressively sought relevant discovery by way of  
 written motion.

1 complaint. *Purser deposition, page 85, attached as Exhibit "A" to*  
 2 *Declaration of Brett A. Greenfield.*

3 Purser failed to identify Tina Arndt in her Final Witness List  
 4 and responses to Boehm's written discovery, set two. Attached Exhibits  
 5 "B" and "C" to the Declaration of Brett A. Greenfield.

6 On December 14, 2006, Boehm's investigator located Ms. Arndt,  
 7 interviewed her and thereafter obtained her sworn declaration.  
 8 The declaration:

9 **-Was disclosed to Plaintiff's counsel on December 29,  
 10 2006; and**  
 11 **-Impeaches all of Purser's allegations creating  
 multiple issues of material fact**

12 Prior to December 12, 2006, Boehm's current counsel had not  
 13 discussed nor sought to communicate with Tina Arndt. See Declaration  
 14 of Brett A. Greenfield

15 Purser's counsel was aware of the existence of Tina Arndt and  
 16 four additional witnesses as set forth in Purser's deposition  
 17 testimony, (*Purser Deposition, page 85*), but failed to identify them  
 18 in her written and sworn responses to Boehm's second set of discovery.  
 19 Attached as Exhibit "D" to Declaration of Brett A. Greenfield.

20 **ii. Vince Blomfield**

21 On December 13, 2006, Boehm's investigator located Mr. Blomfield  
 22 for the purpose of an interview. Boehm's counsel thereafter obtained  
 23 his sworn declaration.

24 The declaration:

25 **-Was disclosed to Plaintiff's counsel on December 29,  
 26 2006; and**  
 27 **-Impeaches Purser's allegations creating  
 multiple issues of material fact**

1 Purser knew of Mr. Blomfield's existence as set forth in his  
 2 sworn declaration, but failed to identify him in her Final Witness  
 3 List, sworn deposition testimony and written responses to discovery.

4

**iii. Dr. Rose**

5 Dr. Rose is Purser's expert. Dr. Rose's report was used by  
 6 Boehm's counsel as impeachment to Purser's sworn deposition testimony  
 7 which revealed:

8 - Many events of Purser's life were withheld from Dr. Rose  
 9 creating inferences to be drawn from her testimony;  
 10 -Inconsistent testimony and recorded interviews in which  
 11 Purser makes sexual assault claims against her uncle;  
 12 -Inconsistent claims about her cause of drug addiction;  
 13 -Inconsistent claims of her past sex behavior for drugs and  
 14 money;  
 15 -Inconsistent claims regarding her family history of drugs  
 16 and violence;  
 17 -Inconsistent claims regarding her alleged relationship with  
 18 Boehm.

16

**iv. Miranda Ditullio Testimony**

17 Purser named Ditullio on her Final Witness list as "M.D." Purser  
 18 and her counsel have always been aware of her existence.

19 Purser failed to identify Ms. Ditullio in her sworn deposition  
 20 and sworn answers to discovery.

21 Ms. Ditullio was interviewed by investigator Terry Shurtleff for  
 22 the purpose of the underlying criminal matter. Ms. Ditullio's  
 23 interview was used solely for impeachment purpose and contradicts all  
 24 of Purser's allegations.

25

**v. Purser Grand Jury Testimony and Interviews**

26 Purser and her counsel cannot be surprised by the use of her  
 27 Grand jury testimony and statements to investigators as impeachment

28

1 to her present claims. Purser has acknowledged their existence and  
 2 testified to making the statements in her December 12, 2006  
 3 deposition. How can she now claim to be "sand bagged" by her own past  
 4 statements?

5

6 **III. PURSER HAS GIVEN EVASIVE DISCOVERY RESPONSES AND HAS FAILED TO**  
**INITIATE RELEVANT DISCOVERY TO DATE**

7 Purser's propounded written discovery has been limited to 1.  
 8 financial documentation and 2. a request for interviews prepared for  
 9 Boehm's criminal defense team for the purpose of an appeal. Boehm  
 10 responds as follows:

11 1. There were no interviews made for the purpose of a criminal appeal,  
 and;

12 2. Investigator interviews were taken for the underlying criminal  
 action and are solely for the purpose of impeachment.

14 Plaintiff's remaining discovery has been presumptuous at best,  
 15 limited to obtaining Boehm's financial documentation, including but  
 16 not limited to:

- 17 - IRS tax documents and returns;
- 18 - Names and addresses of every tax person assisting in  
     the preparation of tax returns;
- 19 - Names and addresses of banks;
- 20 - Names and addresses of savings and loan facilities;
- 21 - Names and addresses of on or off shore accounts;
- 22 - Stock accounts;
- 23 - Business ledgers and Payroll ledgers;
- 24 - Names and addresses of business partners;
- 25 - Corporate stock certificates;
- Affiliations with corporations and/or limited  
     partnerships;
- Balance sheets;
- Documents filed for the purpose of business/personal  
     loans;
- Names and addresses of investors and stock holders;
- Assets sold or transferred.

26 Purser's counsel has refused to cooperate in discovery  
 27 necessitating Boehm to file two Motions to Compel Discovery.

1

2       Specifically, Purser has evasively responded to written discovery  
 3 and refuses to allow for a psychological evaluation with Boehm's  
 4 expert Dr. Mark Mills.

5       Currently, Purser refuses to give adequate responses to  
 6 relevant questions regarding her Final Witness List.

7       Boehm has been very specific when attempting to narrow the issues  
 8 with respect to Purser's Final Witness List. Boehm's second set of  
 9 discovery requested as follows:

10       **1. As to each person identified in your Final  
 Witness List, describe in detail, including, but  
 not limited to the following:**

12       a. How you first met;  
 13       b. When you first met;  
 14       c. Who introduced you;  
 15       d. Where you first met;  
 16       e. The nature of your relationship, how long it  
           lasted, and why it ended;  
 17       f. That person's knowledge of your alleged  
           sexual contact with Defendant Boehm;  
 18       g. That person's knowledge of your alleged drug  
           use with Defendant Boehm;  
 19       h. That person's facilitating or involvement  
           with the activities described in subsection (f);  
 20       I. That Person's facilitating or involvement  
           with the activities described in subsection (g).

21       Purser's response was evasive, further frustrating Boehm's  
 22 attempt to narrow the issues of litigation and timely comply with this  
 23 Court's discovery deadline:

24       Question compounding in nature and this information has  
 25 already been supplied to the Defendant on more than one  
 26 occasion. Defendant has in his own possession, the  
 27 information requested with regard to the Federal Criminal  
           charges he pled guilty to. The Plaintiff knows of the  
           witnesses but does not personally know the witnesses,  
           except for "E.A., Kimberly Swentek, Bambi Tyree, Leslie  
           Williams, Allen Bolling, Josef Boehm, Paxton Purser and  
           Gerald Barnes. Some of the these individuals the Plaintiff

28

met while at Defendant Boehm's home during the period of 2001-2003...

Purser has repeatedly concluded that liability has been proven but is evasive when asked to support her allegations. To date, Purser relies on her own affidavit and that of recently dismissed defendant Bambi Tyree to support the entirety of her factual allegations. The recent discovery of new evidence and exposure of a multitude of impeachment evidence shows good cause for the need of additional discovery and disclosure.

#### IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this honorable Court deny Plaintiff's motion in its entirety and in the alternative fashion an order allowing for additional discovery in order to better assess the issues to be litigated.

DATED this 29th day of January, 2007.

KENNER LAW FIRM

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
David E. Kenner  
California 41425  
16000 Ventura Blvd.  
Penthouse 1208  
Encino, California 91436

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Brett A. Greenfield  
California 217343  
16000 Ventura Blvd.  
Penthouse 1208  
Encino, California 91436